



CITY OF DANBURY
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ZONING COMMISSION
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MINUTES
APRIL 8, 2008

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The meeting was called to order by Chairman Ted Farah at 7:35 PM.

Present were Anthony DiCaprio, Ted Farah, Theodore Haddad Jr., Patrick Johnston, Richard P. Jowdy, David Manacek, Robert Melillo, Larry Stramiello, Andrew Wetmore and Alternate Thomas Spegnolo. Also present was Planning Director Dennis Elpern.

Absent were Alternates Victoria Hickey and Jacqueline Perez-Ares.

Mr. Melillo led the Commission in the Pledge of Allegiance.

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PUBLIC HEARING:

7:30 PM – Petition of Michael J. Halas d/b/a to Amend Section 4.A.5.f.(9) of the Zoning Regulations. (Clarify farming operations permitted in the RA zones).

Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Commission recommendation which was positive. Chairman Farah read the Planning Department Staff Report dated March 19, 2008.

Michael Halas Sr. spoke in favor of this petition. He said in the early 1920's, his family's original dairy farm was located on Bear Mountain Rd. He described the historical background of the family business and said since he took it over; he needed to diversify because of the food stores opening 24/7. He said one of the things he did was to add other farm products for sale. He said once he was notified of this violation in using new parcel for additional farming services, he immediately contacted City Hall and worked with the Planning & Zoning Dept. to come up with this language. He then did a PowerPoint presentation about the business and showing the sites and how they are use. It also showed a rendering of what they hope to have the property look like. He said the new parcel would be used for the temporary storage of mulch piles which are located in the farm fields right now. He provided the Commission members with individual folders containing all of the information from this PowerPoint presentation (Exhibit A) including the rendering (Exhibit B). He then said he had some letters written in support of this by people who were unable to be here this evening. He said there also were some people present to speak in favor of this.

Brian Farrell read letter from Gus Edwards encouraging the Commission to permit the growth of farming in the City (Exhibit C).

Greg Mecca read letter from Gary Kurz, the owner of Rosy Tomorrows, stating they are customers and would like to see everything possible done to encourage the continuation of the farm market. (Exhibit D)

Bill Jacovic identified himself as a Danbury resident. He said this is about more than just the use of property; it is about how we view farming and agriculture in our city. He asked if we want to be like Norwalk, Bridgeport or White Plains. This farm has good farm land, but has been forced to increase their product line to maintain viability. He said he cannot see any negative impact from this.

Don Taylor, Taylor Family Farm, said his is the only other active agricultural production farm in the City. He added that this would not impact his operation because he has thirty acres surrounded by residential land. He said this is a gateway to the City on Rt. 37 and is very beautiful. The Halas Family has long history in Danbury. He added that their farms have always worked together and never been competitors. In closing, he said this City needs to encourage whatever farming it has left.

Tom St. Jean, 14 Deerfield Ave., said he wants to share his opinions about this request. He said for 60 years, he has been going to the Halas farm. People won't appreciate the value of small farms like this until they are gone. He introduced the applicant's son, Mike Jr., who will eventually take this business over. He said this is a landmark that should be preserved as one of the last remnants of New England charm. He said the outcome of this should be two fold: one, the Commission should approve this change and two, they should also realize that there is opposition who has unfairly gone around to all of the neighbors calling this an eyesore. He added that the opposition should not be calling this an eyesore when his house looks like an eyesore. Mr. Johnston suggested to Mr. St. Jean that he file a complaint if he feels this opposition's property is in violation of the Regulations.

Chairman Farah asked if there was anyone to speak in opposition.

Ken Gucker, 89 Padanaram Rd. said Mr. St. Jean was talking about his property and it is not an eyesore. He said he made up notice because this type of application did not require the neighbors be notified and some of them did not know what was going on at this property. He said a sign which obstructs the view was put on the subject property. He added that he has no problem with what they do there. He said the problems in the past have been brought to their attention. He distributed a highlighted map (Exhibit E) and spoke about this site's history of compliance. He said even if the road was not there, these properties are not adjacent to one another. He questioned if the existing farm properties should be allowed to remain as separate lots. He said the history of this business has been that a Cease & Desist is issued by the Zoning Officer, which is followed by a petition to change the language in the Regulations regarding farming. He said it has been eight months since the most recent Cease & Desist Order was issued. The eyesore he referred to is the trees and rocks on the subject property and he suggested that this area could turn into farm sprawl. He expressed concern for the

sightlines saying they are already not very good. He mentioned the traffic counts on this road and suggested the Commission members drive this road to see how it really is. Mr. Melillo said many of these concerns would be addressed during the site plan review. Mr. Gucker said he has a hard time believing that this will happen as described and asked that the Commission think beyond this application. He said previous changes that have been made have created problems for the City. Mr. Wetmore asked Mr. Elpern about the notice requirement. Mr. Elpern said all aspects of the statutory notice requirements were met. Mr. Gucker suggested that possibly the City needs more Zoning Enforcement Officers. Mr. Johnston asked for more information about the Cease & Desist Orders.

Sandra Johnston, 32 Cannon Dr., asked that they consider the other residential properties in this area before deciding this. (Note: no relation to Commission member Johnston).

Donna Coyle, 1 Johnson Dr., said she is not really for or against. She said she is upset about all the trees being taken down because they can really hear the noise in their back yard now. She said she hopes that the trees will be replaced, since her back yard is basically Rt. 37 and now she can hear everything. She reiterated that she is not really against this; she just is hoping the applicant will do something about the noise.

Teresa Radachowsky, 91 Padanaram Rd., said she is neither for nor against this. She said this stretch of road is dangerous due to the blind corner and the intersection with Barnum Rd. She expressed concern about the proposed access to new site and the crossover traffic between it and the existing farm property. In closing she said she loves the convenience of having the market there and is very impressed with how they have done it so far.

Mr. Halas then spoke in rebuttal to the opposition's comments. He said the only abutting property owners, Randy & Rachel Wade, signed a petition in favor of this amendment. He submitted this petition, which had 43 signatures (Exhibit F). He then said the sign that was mentioned was not an issue with the Zoning Officer. He referred back to the slide showing the improvements he made to the sightline. He said he wanted the road to be a safer place and the trees that were hanging over the road were a hazard. He mentioned that as a young child, he watched his sister get hit and killed by a car, so he feels really strongly about keeping this area safe. He said he had no permit to take the trees down but whoever bought this property would have done the same things. He said he will work with the Planning Dept to get the site plan approved so that everyone benefits. He explained that in 1998, he wanted to change the zone, but the City encouraged him to because it would create a spot zone. He said he owns both of the parcels where the farm is now and the former Zoning Officer had him eliminate the residential usage on them. He said this specifically is about contiguous versus abutting. He said he has a license agreement for the Barnum Rd. parcel that allows him to maintain it and put the sign up. It was an eyesore before and now it looks beautiful. He said regarding the possibility of the bank eroding, the City Highway Dept. is out there all the time trying to control it, and he will pull it back further if necessary. He said before he bought this property it had become a drug haven and he couldn't leave his wife and kids home alone without worrying about it being right across the street. In closing, he said he stands for integrity and if this is approved, he will demonstrate it.

Mr. Elpern then asked how much traffic will be going back and forth between the existing farm and this new property across the street. Mr. Halas said less than 10% of his mulch business is pickup, 90% of it is delivery, so there should be no more traffic than a typical residential home with 3-4 cars. Mr. Manacek asked if it will be used primarily for storage, with the retail taking place across the street on the existing farm property. He also asked if there would be retail sales there in the future. Mr. Halas said it is not feasible that there will be retail sales from the new site. Mr. Johnston then asked the same thing again. Mr. Halas said mulch is really a seasonal business, so the traffic is heavier in May, June & July. Mr. Haddad asked what this new language would actually allow. Mr. Elpern said he could store products intended for retail sale on the site. Mr. Haddad asked if this goes with the property not the person. Mr. Elpern said the use of the lot has to be under same ownership. Mr. Haddad asked if the Commission can limit the products he can sell there. Mr. Elpern said they can say that, but it is not enforceable. Mr. Johnston said one of the big concerns is temporary storage to be located across the street versus selling from this site. Mr. Halas said the more times a product is handled the less profit there is in it. He added that his intent is to store mulch there. Mr. Melillo asked if there would be any retail sales from the site and Mr. Halas said there would not.

Chairman Farah asked Mr. Elpern for additional staff comments. Mr. Elpern said regarding the comments about the legal notice, the statutory requirements were satisfied. He said the publication of legal notices is already very costly and it is doubtful that we will be able to make them any larger. He added that it is not up to us to go door to door with notices. Regarding the issue about whether this touches the existing property it is adjacent to it not abutting it. the difference between adjacent and abutting is the difference between nearby and touching. He said the setback requirements would prevent this from expanding to the nearest residential property. He added that no City dept. is more concerned about sightlines than Planning. This will be subject to review by the Planning Commission and the City Traffic Engineer. There are no regulations that prohibit the cutting down of trees and there probably will not be any in the future. The issue of crossover traffic will be looked at during the site plan review. Mr. Elpern then said they need to be careful about overstating cases and inflating words that are used. This is not a development, it is simply a proposal to allow the storage of materials on the property. Mr. Melillo asked if they should consider this as a site specific situation. Mr. Elpern said when this petition was received, there were only two farms in the City but another farm could always open up in the future. Mr. Johnston asked if spot zoning or contract zoning applies here. Mr. Elpern said spot zoning only applies to an application for rezoning. Mr. Johnston asked if they would have to rely on the Planning Commission regarding the traffic issues. Mr. Elpern said he cannot imagine the traffic impact from this to be significant. Mr. Melillo asked if it would be looked at differently since it is a State road. Mr. Elpern said the traffic is irrelevant to this consideration since that falls under site plan review.

Mr. DiCaprio made motion to keep hearing open so he can look at the site. Mr. Elpern said they can close the hearing and still visit the site. Mr. Haddad asked if the intent was to keep it open to allow the public to speak. Mr. Melillo said the notice requirement was met, and someone did go door to door and let other neighbors know. He added that he

is in favor of visiting the site but does not think they should keep the hearing open for any more comment. Mr. DiCaprio said he believes that is what is needed in this matter. Mr. Wetmore said the applicant presented adequate information and views of the site and they should have visited the site before the meeting. Chairman Farah called a roll call vote on motion to continue the public hearing and the motion was denied with two AYES (from Mr. DiCaprio and Mr. Johnston) and seven NAYS (from Mr. Haddad, Mr. Jowdy, Mr. Manacek, Mr. Melillo, Mr. Stramiello, Mr. Wetmore and Chairman Farah). Mr. Jowdy then made a motion to close the public hearing. Mr. Melillo seconded the motion and it was passed with eight AYES and one NAY (from Mr. DiCaprio).

Chairman Farah said they would take a five- minute recess. The meeting was called back to order at 9:40 PM.

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OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

Mr. Stramiello made a motion to move the Halas petition to item one under Old Business. Mr. Wetmore seconded the motion. Chairman Farah asked for discussion. Mr. DiCaprio said he really would like to make a site visit before voting on this and he implored all of the members to do the same. Mr. Johnston said he agreed with Mr. DiCaprio and does not think they should vote tonight. Mr. Manacek asked how many members have seen the site. Mr. DiCaprio said he has driven by it many times but wants to actually see it. Mr. Haddad said historically this Commission has always honored requests to continue hearings if members do not feel ready to vote. Mr. Melillo pointed out that this is not a site based zone change, it is a language change. Mr. Haddad said although it is not site specific, the granting of this will affect the two farms in the City. Mr. Stramiello then said he made he motion because he felt there had been ample notice given and the Commission members had the time and opportunity to view the site before tonight. Mr. Wetmore agreed that he too felt there had been time before this evening. Chairman Farah said that may be true but there are at least three people including him who have not yet visited the site.

Chairman Farah took a roll call vote and the motion to move this to Old Business was denied unanimously with nine AYES (from Mr. DiCaprio, Mr. Haddad, Mr. Johnston, Mr. Jowdy, Mr. Manacek, Mr. Melillo, Mr. Stramiello, Mr. Wetmore and Chairman Farah).

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NEW BUSINESS:

ZBA Subcommittee/ZBA Application for Use Variance: #08-20 – His Vineyard d/b/a His Vineyard Christian Fellowship, 22 Shelter Rock Rd. (#L15006), Request to vary Sec. 6.A.2.a., to permit a church use in the IL-40 Zone. Zoning Board of Appeals public hearing scheduled for April 24, 2008.

Since this was just received, Chairman Farah asked the ZBA subcommittee (which consists of Mr. Melillo, Mr. DiCaprio and Mr. Jowdy) to be ready to present their report at the next regular meeting, so the Commission can make their recommendation.

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OTHER MATTERS:

Mr. Haddad said it has always been the policy of this Commission that when one member requests more time to consider a petition or to visit a site, the rest of the Commission respectfully honors that request.

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Chairman Farah noted that there was nothing under Correspondence and the For Reference Only listed three public hearings scheduled for April 22, 2008.

At 9:50 PM, Mr. Melillo made a motion to adjourn. The motion was seconded by Mr. Johnston and passed unanimously.